

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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ROBERT MATTHEWS,

Plaintiffs,

Civil Action No.:

-against-

NOTICE OF REMOVAL

PENSKE TRUCK LEASING CO., L.P., TRACIE
MCCORMICK, INC., and DAVID DERR,

Defendants.

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TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

Defendants-Petitioners, PENSKE TRUCK LEASING CO., L.P., TRACIE
MCCORMICK, INC., and DAVID DERR file this notice to remove the foregoing case to the
United States District Court for the Western District of New York, and respectfully show this
Court:

1. A civil action was commenced in the Supreme Court of Monroe County, State of
New York, in which the above-named individual, ROBERT MATTHEWS is the plaintiff and the
petitioners are defendants PENSKE TRUCK LEASING CO., L.P., TRACIE MCCORMICK,
INC., and DAVID DERR. The action is entitled ROBERT MATTHEWS v. PENSKE TRUCK
LEASING CO., L.P., TRACIE MCCORMICK, INC., and DAVID DERR and bears Index
Number E2022000244.

2. This is a civil action seeking damages arising out of a motor vehicle accident
allegedly caused by the defendants' negligence. The plaintiff alleges personal injuries.

3. On January 11, 2022, plaintiff ROBERT MATTHEWS ("Plaintiff") filed a
Summons and Complaint in the Supreme Court of New York, County of Monroe. A copy of the
Summons and Complaint is annexed hereto as **Exhibit "A"**. The plaintiff's complaint demands an
amount in excess of the lower courts jurisdictional limits. Id. at paragraph 28.

4. On January 14, 2022, a copy of Plaintiff's Summons and Complaint was delivered to the co-occupant of DAVID DERR at his place of residence. On January 21, 2022, Defendant-Petitioner DAVID DERR was mailed plaintiff's Summons and Complaint. An affidavit of service as to DAVID DERR was filed with the Supreme Court of New York, County of Monroe on January 24, 2022. Service was completed ten days after such filing, on February 3, 2022. A copy of the affidavit of service is annexed hereto as **Exhibit "B."**

5. On January 20, 2022, Defendant-Petitioner PENSKE TRUCK LEASING CO., L.P. was served with Plaintiff's Summons and Complaint. A copy of the affidavit of service is annexed hereto as **Exhibit "C."**

6. On February 2, 2022, Defendant-Petitioner TRACIE MCCORMICK, INC. was served with plaintiff's Summons and Complaint by delivering a copy to Carolyn Butcher, authorized agent. A copy of the affidavit of service is annexed hereto as **Exhibit "D."**

7. No proceedings have occurred in the state court action. Thirty (30) days from the time a defendant in the instant action was last served with Plaintiff's Summons and Complaint is March 5, 2022. Pursuant to 28 U.S.C. §1446(b)(2)(C), this petition is timely filed within thirty (30) days of the last defendant to be served with Plaintiff's Summons and Complaint in the instant matter.

8. This action involves a controversy between a citizen of the State of New York, a privately held limited partnership organized and existing under the laws of the State of Delaware, a privately held corporation based in and organized under the laws of the State of Tennessee, and a citizen of the State of Pennsylvania in that (a) Plaintiff is a resident of the of County of Monroe, State of New York; (b) Defendant-Petitioner PENSKE TRUCK LEASING CO., L.P. is a limited partnership organized and existing under the laws of the State of Delaware and maintains a

principal place of business in Pennsylvania. PENSKE TRUCK LEASING CO., L.P. is comprised of one general partner (PTL GP, LLC) and three limited partners (Penske Truck Leasing Corporation, Penske Automotive Group, Inc. and MBK USA Commercial Vehicles, Inc.). PTL GP, LLC is a Delaware limited liability company with its principal place of business in Pennsylvania. The sole member of PTL GP, LLC is LJ BP Holdings, LLC, a Delaware limited liability company with its principal place of business in Pennsylvania. The sole member of LJ VP Holdings, LLC is Penske Truck Leasing Corporation, a Delaware corporation with its principal place of business in Pennsylvania. Penske Truck Leasing Corporation is a Delaware corporation with its principal place of business in Pennsylvania. Penske Automotive Group, Inc. is a Delaware corporation with its principal place of business in Michigan. MBK USA Commercial Vehicles, Inc. is a Delaware corporation with its principal place of business in Japan; (c) Defendant-Petitioner TRACIE MCCORMICK, INC. is a domestic corporation organized and existing under the laws of the State of Tennessee and maintains and principal place of business in Tennessee; (d) Defendant-Petitioner DAVID DERR is a resident of the County of Centre, State of Pennsylvania at 407 Hublersburg Road, Bellefonte, Pennsylvania, 16823.

9. Here, there is complete diversity between plaintiff and defendants and the amount in controversy exceeds \$75,000.00. As such, said action is one of which the District Courts of the United States have original jurisdiction under 28 U.S.C. § 1332 and 28 U.S.C. § 1441. Removal of the state court action to this Court is therefore appropriate under 28 U.S.C. § 1441(b).

10. Pursuant to 28 U.S.C. §1446(b), a Notice of Removal shall be filed within thirty (30) days after receipt by defendant, by service or otherwise, of the initial pleading or of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable. Further, pursuant to 28 U.S.C. §1446(b)(2)(C),

each defendant shall have thirty (30) days after receipt by or service on that defendant of the initial pleading or summons. Therefore, this Petition for Removal is timely filed since it is filed within thirty (30) days of receipt of the Complaint.

11. Written filing of this motion will be given to the plaintiff promptly after the filing of this motion.

12. A true and correct copy of this motion will be filed with the Clerk of the Supreme Court of Monroe County, State of New York promptly after the filing of this motion, as is required by law.

13. Attached to this motion, and by reference made a part hereof, are true and correct copies of all process, pleadings and orders filed in the aforesaid action.

14. By filing this Notice of Removal, petitioners do not waive any defense which may be available to them, specifically including, but not limited to, their right to contest in personam jurisdiction over the petitioners, improper service of process upon the petitioners, and the absence of venue in this Court or in the court from which the action has been removed. Further, no admission of fact, law or liability is intended by this Notice of Removal, and all defenses, affirmative defenses and motions are hereby reserved.

WHEREFORE, petitioners pray that this action proceed in this Court as an action properly removed thereto.

Dated: New York, New York
February 28, 2022

Yours, etc.,

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: Julia L. Harvey
Julia L. Harvey, Esq.
Attorneys for Defendants

PENSKE TRUCK LEASING CO., L.P.,
TRACIE MCCORMICK, INC., and DAVID
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